

## PROFESSIONAL SERVICES CONTRACT

EDS#

This Contract (the "Contract"), entered into by and between the Indiana Department of Child Services (hereinafter referred to as "State" or "DCS") and \_\_\_\_\_ (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

Per Indiana Code **IC § 31-25-2-7 (11) and § 31-26**, DCS is the entity authorized to certify organizations as youth service bureaus. By statute, the certification is available to *any* organization that meets the criteria established by DCS, including those *mandated by statute* (IC 31-26-1-3 Certification requirements). DCS' criteria include:

- (1) The organization must be *registered with the secretary of state as a nonprofit corporation or must be an agency of a local governmental unit.*
- (2) The organization must *develop and operate direct and indirect service programs designed to do the following:*
  - (A) *Support, represent, and protect the rights of young people.*
  - (B) *Prevent adolescent misbehavior and divert young people from the justice system.*
  - (C) *Maintain a referral system with other service agencies that might benefit young people.*
  - (D) *Inform and educate citizens about the functions and services available through the organization and serve as a link between the needs of youth and the community.*
- (3) The organization must provide a needs assessment indicating a current need for Youth Service Bureau services in the community.
- (4) The organization must participate in continuing education to remain current with the best practices in youth services. For current Youth Service Bureaus, this requirement should be fulfilled by attendance at two (2) of the three (3) annual trainings available pursuant to this Contract. New applicants for Youth Service Bureau certification ("New Applicants") will also have to meet a continuing education requirement, but may present evidence of training by or comparable to the Contractor's training.
- (5) The organization must participate in peer reviews as required by DCS and successfully address any required remediation.

### **1. Duties of Contractor.**

The duties of the Contractor are to provide the following:

- A. The Contractor shall provide the Youth Service Bureau (YSB) Administration Services set out in more detail herein below and in accordance with the following (all of which are hereby incorporated by reference):

- (1) The YSB Administration Services must be provided by the Contractor in accordance with DCS' Request for Proposal to Provide Youth Service Bureau Administration Coordination and all of its attachments (the "YSB Administration RFP"), which was issued by DCS in March 2013. The relevant portions of the YSB Administration RFP are attached hereto as **Exhibit 1** and hereby incorporated by reference with the remainder of the YSB Administration RFP and its attachments currently available at the following link (or any designated successor website):

[link to be provided at later date]

- (2) The YSB Administration Services provided by the Contractor must also comply with the most current version of the assurances (the "Assurances") that the Contractor made in conjunction with the YSB Administration RFP, except to the extent that the terms of this Contract might specifically modify those Assurances. The Assurances may be modified/updated from time to time by DCS, but such Assurances are included in the attached YSB Administration RFP and are also available in their most current form at the following link (or any designated successor website):

[link to be provided at a later date]

- (3) The YSB Administration Services must be provided by the Contractor in accordance with the budget that DCS has approved for the Contractor's provision of YSB Administration Services and as set forth in **Attachment A** (which is attached hereto and hereby incorporated by reference); and
- (4) Subject to the qualification outlined herein below regarding the budget, the YSB Administration Services provided by the Contractor must also comply with the Contractor's Response to the YSB Administration RFP (the "Contractor's RFP Response"), which was submitted by the Contractor in accordance with the specifications of the YSB Administration RFP. The relevant portions of the Contractor's RFP Response are attached hereto as **Exhibit 2** and hereby incorporated by reference. To the extent a provision of the budget submitted by the Contractor in the Contractor's RFP Response conflicts with a provision of the budget approved by DCS for the Contractor's provision of YSB Administration Services (which is referenced above in paragraph (A)(3) of this Section and reflected in **Attachment A**), the budget approved by DCS shall supersede and control.

**B. Administer the Youth Service Bureau Accreditation Process**, which shall consist of the following services:

- (1) As set forth above, DCS is the accreditation body, having sole authority to accredit agencies as a YSB according to IC § 31-26-1. However, via this

Contract, DCS is delegating the accreditation process to the Contractor. As part of the Contractor's duties in administering such YSB accreditation process, the Contractor shall:

- (a) Work with DCS to develop an accreditation process.
  - (i) The Contractor shall make recommendations to DCS regarding the accreditation of new agencies applying for accreditation.
    - (A) DCS has final authority to accept or deny such recommendations.
- (2) The Contractor shall conduct peer reviews as required by DCS in accordance with the following process:
  - (a) The Contractor shall conduct peer reviews as required by DCS in the amount of up to thirty-four (34) over a two (2) year period (if this Contract is renewed for an additional year), with a maximum of seventeen (17) per year (unless DCS, at its discretion, requires a different number of peer reviews per year of the Contract). The Contractor's oversight of the peer review process involves scheduling reviews, collecting and distributing materials in advance of each review, and staff participation in each review. At DCS' discretion, DCS may determine which YSBs are to be reviewed in any given year of this Contract by providing the Contractor with a list of the names of such YSBs.
  - (b) The Contractor shall provide DCS with the peer review schedule in advance and shall notify DCS of any changes as they develop and before the new dates.
  - (c) Oversight of peer reviews, follow-up, and remediation entails the collection of necessary documentation, providing staff oversight of the remediation plans, and necessary monitoring of organizations requiring remediation plans. An average of seven (7) hours per bureau is allocated to peer review follow-up and remediation.
  - (d) The Contractor shall provide DCS with reports that show the results of the peer reviews and reports that show the progress of sites that require remediation. Such reports must be distributed to DCS on a quarterly and annual basis as set forth in more detail below in paragraphs D(5) and D(7) of this Section. If DCS would decide at a later date to request such reports more frequently or in accordance with a different timeframe, then the Contractor must distribute such reports to DCS in accordance with DCS' currently

desired timeframe (as long as DCS notifies the Contractor of any modifications to such desired timeframe).

- (e) The Contractor will make recommendations to DCS regarding the continued accreditation of YSB Fund Grantees.
  - (i) DCS has final authority to accept or deny such recommendations.
- (f) New Applicant peer reviews may be addressed by a modification to the Contract (if necessary) or by a DCS' request to defer review of an existing YSB and substitution of a New Applicant review in its place.
- (g) YSB Certification Recommendations: The Contractor shall provide DCS with an annual list by June 30<sup>th</sup> of all providers seeking YSB certification and the Contractor's recommendation with respect to those certifications.

**C. Develop, Distribute, and Review of Service Standards and a Request for Proposal for the Youth Service Bureau Fund**

- (1) The Contractor will adhere to IC § 31-26-1.
- (2) The Contractor will convene a committee of YSB Fund Grantee representatives to research and develop service standards, design the Request for Proposal (RFP), and create a RFP scoring training curriculum. The committee and the Contractor will make recommendations on these items to DCS which will have final approval of any document or process created.
- (3) Request for Proposal
  - (a) The Contractor will develop and distribute a RFP to accredited YSB Fund Grantees. The RFP process will first be used to select YSB subcontractors for contracts running from 7/1/14-6/30/15 (and then subsequent years as well if this Contract is subject to renewal(s)).
  - (b) The Contractor's RFP process must mirror the State's process of releasing RFP's.
  - (c) The Contractor will develop a funding allocation methodology and seek DCS' approval of the allocation method.
  - (d) The Contractor will solicit, train and engage a panel of selected proposal reviews.
  - (e) Proposals will be reviewed and scored using objective criteria.

- (f) Based on the scores, the Contractor will make funding recommendations to DCS.
- (g) The Contractor will submit a copy of the distribution lists and completed scoring sheets to DCS to verify that proposals were distributed and scored.
- (h) The Contractor will make recommendations to DCS for which YSB Fund Grantees should be awarded a contract and funding through the RFP process. In accordance with IC § 31-26-1, DCS has the final authority on granting approval of which YSB agencies will be extended contracts and the amount of YSB funds to be distributed.
- (i) **For the first sub-contract cycle, which shall run from 7/1/13-6/30/14, DCS has made already decisions on whom the chosen recipients will be, based upon DCS' Youth Service Bureau RFP that was previously posted. See Attachment G to the YSB Administration RFP which lists the agencies that shall be awarded a contract effective 7/1/13. It is the intent of the YSB Administration RFP that the Contractor contract with all existing accredited YSBs who were selected by DCS via the DCS' Youth Service Bureau RFP (which are listed in Attachment G to the attached YSB Administration RFP).**

- (4) Work with DCS on development of Service Standards
  - (a) Service Standards are developed to guide the operation of direct and indirect service programs designed to prevent adolescent misbehavior and to divert young people from the justice system.
  - (b) The Contractor will submit to DCS (as needed) suggested changes to the service standards based upon discussion with the YSB Fund Grantees.

**D. Oversee Service Provision of Individual YSB Fund Grantees**

- (1) Ensure Compliance of YSB Fund Grantees to the Contract and Service Standard requirements.
  - (a) The Contractor shall ensure YSB Fund Grantees provide services according to the Contract and Service Standard specifications.
  - (b) The Contractor shall ensure all YSB Fund Grantees adhere to the background check requirements set forth by DCS.

- (2) Quarterly trainings:
  - (a) The Contractor shall provide three (3) trainings at various locations across the state of Indiana, per year.
  - (b) Training will be offered to YSBs (with required attendance at two (2) out of the three (3) trainings), and to other youth service providers including those working with runaway and homeless youth, mentoring children of incarcerated adults, as well as other affiliates of the Contractor.
  - (c) Trainings may focus on elements contained in the statutory base for YSB Fund Grantees of prevention of adolescent misbehavior and diversion of youth from the juvenile justice system, youth advocacy, community education, and information and referral.
  - (d) The Contractor will consult with DCS' staff in advance of trainings to access training resources that DCS might make available (e.g., speakers, facilities, etc.). As part of this obligation, the Contractor shall provide DCS with an advance schedule of the above trainings and shall include DCS on the agenda at such meetings (if requested by DCS).
  - (e) The Contractor will provide follow-up evaluations of trainings in the quarterly/annual reports (as outlined in more detail below in paragraphs D(5) and D(7) of this Section).
  - (f) The trainings may also be subsidized with resources from grants and contracts outside of DCS resources.
  - (g) New Applicants may attend such trainings as part of this Contract.
- (3) Development of Outcome Measures
  - (a) The Contractor will develop outcome measures for YSB Fund Grantees.
  - (b) The Contractor must include input from YSB Fund Grantees in the development of the outcome measures.
    - (i) Input may include surveys to all YSB Fund Grantees, creation of a committee on which YSB Fund Grantees are represented, or request the involvement of the YSB Advisory Board.
- (4) Development of a comprehensive, web-based outcomes reporting tool
  - (a) The Contractor will develop a database to collect outcomes.
  - (b) This tool will allow all YSB Fund Grantees to report standardized outcomes and will be capable of long-term outcomes tracking, customized reporting, and automated year-end aggregate reporting.

- (5) Data collection
  - (a) The Contractor will collect quarterly reports from all YSB Fund Grantees. These reports are to contain outcomes data.
  - (b) The Contractor will work with DCS to propose a report format that is acceptable and approved by DCS.
    - (i) The Contractor will provide four (4) quarterly reports to DCS.
    - (ii) The Contractor will also provide an annual report to DCS.
  - (c) The Contractor will gather and review monthly YSB Fund Grantee reports.
  - (d) The Contractor will provide DCS with four (4) quarterly aggregate reports that show outcomes that can be derived from available data.
- (6) Billing
  - (a) The Contractor will create a monthly claiming process to pay appropriate claims to YSB Fund Grantees.
  - (b) The Contractor will verify that all reports are current, accurate, and properly prepared, prior to processing and paying a claim.
- (7) Reporting to DCS
  - (a) The Contractor will provide four (4) quarterly reports to DCS.
  - (b) The Contractor will work with DCS to determine an acceptable report format and information to be reported.
  - (c) The Contractor shall provide DCS with an overall comprehensive annual report of Contractor and YSB Fund Grantee activities.
    - (i) The Contractor will work with DCS to determine an acceptable report format and the information to be reported.
  - (d) The Contractor will gather statistics for quarterly reports submitted to the Governor's Office by DCS.

E. **Fund Development:** As permitted in IC § 31-26-1-4, the Contractor shall engage in fund development during the term of this Contract in an effort to expand the YSB program.

F. **Administration of Project Safe Place:** If DCS chooses to add the Administration of Project Safe Place to this Contract at a later date, DCS shall notify the Contractor of such request and the Contractor shall provide the following additional services:

- (1) Administer the Project Safe Place to ensure that programs meet national standards and be licensed by National Safe Place (PL 209-1988).
  - (a) Service Delivery
    - (i) The Contractor must ensure that program services consist of the five National Safe Place Program components which are Crisis Intervention, Community Outreach/Education, Volunteer Recruitment and Maintenance and Site Recruitment and Maintenance.
  - (b) Data Collection
    - (i) The Contractor will ensure that Project Safe Place (PSP) programs submit monthly data electronically to the National Safe Place database.
  - (c) Billing
    - (i) The Contractor will create a monthly claiming process to pay appropriate claims to PSP grantees.
  - (d) Reporting to DCS
    - (i) The Contractor will provide quarterly reports from the National Safe Place database for the quarterly report submitted to the Governor's Office by DCS.
    - (ii) The Contractor will provide reports to DCS from the National Safe Place database to evaluate the PSP grantee program outcomes and effectiveness based on the National Safe Place Program components.
  
- G. The State shall monitor and review the Contractor's delivery of YSB Administration Services during the term of this Contract. The procedure that the State uses for monitoring the Contractor may change during the term of this Contract, and the Contractor will be notified of any changes in procedure. The procedure that the State uses for monitoring the Contractor may include, but not be limited to, the following:
  - (1) Conduct site visits and case file reviews as a means of ensuring quality service provision;
  - (2) Review of invoices/claims submitted by the Contractor for payment, in relation to the service components and/or service rates and/or other approved budget information specified in **Attachment A**, and in relation to any additional payment/financial information set forth in Section 2 and/or in **Attachment A**, including the specified total remuneration amount in Section 2(D);
  - (3) Information received verbally (which will include a contemporaneous written summary of such information when possible and appropriate) or in

writing from DCS concerning the Contractor's delivery of services requested or approved;

- (4) Information received verbally (which will include a contemporaneous written summary of such information when possible and appropriate) or in writing from service recipients, directly or through a DCS' local office, regarding services provided by the Contractor;
- (5) Review of the results of services provided in relation to the desired outcomes of those services as stated in the YSB Administration RFP and the Contractor's RFP Response; and
- (6) Information contained in the reports and evaluations relating to the Contractor's delivery of services under this Contract.

## **2. Consideration.**

- A. In accordance with and subject to the specifications set forth herein, in the exhibits attached hereto, in **Attachment A** (which is attached hereto and hereby incorporated by reference), and in Section 36 of this Contract, and solely for its provision of the services described above herein, the State's payment to the Contractor for services will be based on the specified service components and budget amounts reflected in the budget that DCS has approved for the Contractor's provision of YSB Administration Services and as set forth in **Attachment A**.
- B. The Contractor hereby agrees that all actual cost items and/or pass through cost items related to and/or part of the YSB Administration Services it provides pursuant to this Contract must be at reasonable rates and not above the prevailing market rates.
- C. The only expenses for travel that will be reimbursed by the State are those travel expenses specifically permitted under the scope of services or consideration provisions as set forth in Sections 1 and 2 of this Contract (including any applicable exhibits/attachments/links to relevant websites). If properly invoiced for as set forth in this Section and Section 36 of this Contract, such expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.
- D. Total remuneration under this Contract shall not exceed \$\_\_\_\_\_.
- E. Payment to the Contractor as provided in this Section will also be subject to the following conditions:

- (1) Timely completion and submission to DCS of all requisite reports relating to the Contractor's provision of services pursuant to this Contract, as set forth in Section 1 and in the YSB Administration RFP; and
- (2) Satisfactory completion and submission to the State of any applicable work product or other deliverable, as specified herein, in any attached exhibits, and/or in **Attachment A**, for services that are provided by the Contractor and/or its subcontractors pursuant to this Contract; and
- (3) Timely resolution of any issues related to Department of Revenue ("DOR") or Department of Workforce Development ("DWD"). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD "holds" exist.

**3. Term.**

This Contract shall be effective for a period of one (1) year. It shall commence on July 1, 2013, and shall remain in effect through June 30, 2014.

**4. Access to Records.**

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors; and Subcontracting.**

- A. The Contractor agrees to bind its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one (1) party.
- B. The Contractor shall monitor the performance of all subcontractors and shall remain responsible to the State for the performance of any subcontractor. The Contractor agrees to enter into written agreements with all subcontractors and to provide copies of all subcontracting agreements to the State upon request. The Contractor further agrees to notify the State of a breach of these provisions by a subcontractor and to discontinue any agreement with the specified subcontractor

in the event of such a breach.

**6. Assignment of Antitrust Claims.**

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

**7. Audits and Monitoring.**

- A. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1 *et seq.* and audit guidelines specified by the State.
- B. DCS considers the Contractor to be a “vendor,” for purposes of this Contract. However, if required pursuant to the applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with the Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. The Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

The Contractor shall permit all examinations and shall generate and maintain all documentation necessary to comply with all relevant audit requirements.

- C. In addition to an independent audit completed in accordance with paragraph A or B of this Section, the State may, in its discretion, conduct a separate audit(s) of funds

provided pursuant to this Contract and/or any other necessary on-site monitoring reviews of the Contractor, for the purpose of: (i) outcome tracking; (ii) quality review of the services provided by the Contractor pursuant to this Contract; and/or (iii) conducting any other requisite and/or desired program and/or service audits of the Contractor.

- (1) The Contractor shall, upon written demand by State, be required to repay to the State all sums paid by the State to the Contractor, for which adequate fiscal and/or service delivery documentation is not in existence for any time period audited. If an audit of the Contractor results in an audit exception, the State shall have the right to set off such amount against current or future allowable claims, demand cash repayment, or withhold payment of current claims in a like amount pending resolution between the parties of any disputed amount.
- (2) The Contractor agrees that the State has the right to make recommendations and findings in connection with any financial monitoring or audit of the Contractor's operations, and the Contractor agrees to comply with any corrective actions specified by the State, within the time limits established by the State.
- (3) The Contractor will provide to the State, upon request, a copy of any document or report prepared and maintained by the Contractor relative to costs incurred in providing the services described in this Contract and its attachments/exhibits.
- (4) The parties agree that any authorized employee or representative of the State, the state of Indiana or the United States (hereinafter referred to as "governmental agent") shall have the right to enter the premises of the Contractor or any subcontractor of the Contractor and inspect or audit any records or property agreements maintained by the Contractor or its subcontractors in connection with this Contract. The Contractor and its subcontractors shall make all books, records, and documents that relate to their activities under this Contract available for inspection, review, and audit when requested by a governmental agent. The Contractor shall ensure the cooperation of its employees, officers, board members, and subcontractors in any review, audit, or inspection conducted by a governmental agent.
- (5) Following any State monitoring visit to the Contractor, the State may provide a written report to the Contractor. If the State chooses to provide a written report following a State monitoring visit to the Contractor, the State shall provide such report within sixty (60) days of such monitoring visit. The State's report may contain observations, evaluations, suggestions and/or specific directions for corrective action by the Contractor. In the event that specific corrective action is required, the Contractor will have sixty (60) days from the receipt of the directions to comply, unless a different time period

for correction is specified by State. A failure of the Contractor to comply with the State's specific directions will be treated as a breach of this Contract. In the case of a dispute, the State and the Contractor will meet at their earliest convenience to resolve the issue in question.

- D. As required, the Contractor shall timely file an "Entity Annual Report" (Form E-1) with the State and the Indiana State Board of Accounts.

**8. Authority to Bind Contractor.**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. With the exception of the modification procedures set forth in Section 30 of this Contract, this Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including any disaster plan protocol (Title IV-E and Title IV-B), and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1, and under any other applicable laws.

- C. Before this Contract may be moved through the State signature process, it must pass review by the Department of Workforce Development (“DWD”) and the Department of Revenue (“DOR”). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD “holds” exist. Thus, if the Contractor has unpaid unemployment insurance or unpaid taxes to the State, this Contract will be held until these issues are resolved.
- D. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- E. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract. In the event of DCS’ receipt of a report (verbal or written) of criminal or potentially criminal activity by a member of the Contractor’s staff (including any of the Contractor’s subcontractors and their staff) that potentially threatens/endangers the life, health, or safety of any DCS’ ward(s), DCS may immediately require a temporary suspension of such member of the Contractor’s staff (including any of the Contractor’s subcontractors and their staff) pending an investigation into the report.
- F. If a valid dispute exists as to the Contractor’s liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

- H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- I. As required by IC § 5-22-3-7:
- (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC § 24-4.7 [Telephone Solicitation of Consumers];
      - (ii) IC § 24-5-12 [Telephone Solicitations]; or
      - (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
    - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.
- J. As required by IC § 5-22-16.5, the Contractor certifies that the Contractor is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC § 5-22-16.5-14 including termination of this Contract, denial of future state contracts, as well as an imposition of a civil penalty.

## **11. Condition of Payment.**

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations, as well as in accordance with any applicable accreditation and/or service standards and all specifications set forth above in Section 1 and in the other provisions of this Contract. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract (including, but not limited to, any applicable accreditation and/or service standards and all specifications set forth above in Section 1) or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.**

- A. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.
- B. The parties acknowledge that the services to be performed by the Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this Section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by the Contractor, the Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

**13. Continuity of Services.**

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration and/or termination, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
  - (1) Furnish phase-in training, and
  - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
  - (1) Furnish phase-in, phase-out services after this Contract expires and/or is terminated until DCS is able to enter into a contract with a new contractor for the provision of the YSB Administration Services unless DCS specifies otherwise, and
  - (2) Negotiate in good faith a plan with a successor to determine the nature and extent of any additional phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services

required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration and/or termination that result from phase-in, phase-out operations).

**14. Debarment and Suspension.**

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the state of Indiana. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

**16. Disputes.**

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any

additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

- C. If a party to the Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party shall submit the dispute in writing according to the following procedure:

The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of IDOA. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one (1) of the parties concludes that the presentation period is over. The Commissioner's decision shall be a final and conclusive administrative decision unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

- D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one (1) or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

#### **17. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the state of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Contract payments,

termination of this Contract and/or debarment of contracting opportunities with the state of Indiana for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph A above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision C(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision C(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs A through E above.

**18. Employment Eligibility Verification.**

As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that:

- A. The Contractor does not knowingly employ an unauthorized alien.

- B. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- C. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- D. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option.**

- A. For purposes of this Section 19 of the Contract, the term “employee” is intended to include all staff working on the duties which are the subject of this Contract, including, but not limited to, the Contractor’s employees working on this Contract, any subcontractors working for the Contractor on this Contract, and any of these subcontractors’ employees or subcontractors.
- B. For purposes of this Section 19 of the Contract, the term “hire” or “hiring” means to hire, to directly contract with, to subcontract with, and/or to procure services through a State managed service provider, State quantity purchase agreement, or its equivalent (as determined by the State).
- C. If the State determines at any time during the term of this Contract (including any extensions thereof) that it would be in the State’s best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect within thirty (30) days of receiving a request for such release from the State. This release will be at no cost to the State or the employee.
- D. In order to effectuate the purpose of this Section, the State may initiate conversations about a potential hiring with any employee of the Contractor at any time during the term of this Contract (including any extensions thereof).

**20. Force Majeure.**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.**

- A. It is understood and agreed by the parties that all obligations of the State are contingent upon the availability and continued appropriation of state and federal funds, and in no event shall the State be liable for any payments in excess of available appropriated funds.
- B. If DCS makes a written determination that federal and/or state of Indiana funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be immediately canceled upon the Contractor’s receipt of a written notice from DCS specifying such determination. Such written notice shall be sent in accordance with the specifications set forth in Section 33. A determination by DCS that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- C. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Law.**

This Contract shall be governed, construed, and enforced in accordance with the laws of the state of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the state of Indiana.

**23. HIPAA Compliance.**

- A. This Section applies only to the extent that the Contractor receives any protected health information ("PHI"), as referenced in paragraph B below, or any alcohol and drug abuse records (as defined in IC § 16-18-2-12), health records (as defined in IC

§ 16-18-2-168), or mental health records (as defined in IC § 16-18-2-226), concerning any individual, in connection with performance of any services under this Contract. Any records included in the above definitions in IC § 16-18-2 are referred to herein as "Health Records."

- B. HIPAA. The Contractor agrees to comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification ("HIPAA"), including amendments signed into law under the American Recovery and Reinvestment Act of 2009 ("ARRA"), in particular, applicable provisions of Title XIII known as the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Subtitle D, in all activities related to this Contract, to maintain compliance during the term of this Contract and after as may be required by federal law, to operate any systems used to fulfill the requirements of this Contract in full compliance with all applicable provisions of HIPAA and to take no action which adversely affects the State's HIPAA compliance.

Terms used, but not otherwise defined, in this Contract shall have the same meaning as those found in the HIPAA Regulations under 45 CFR Parts 160, 162, and 164.

To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard all forms of Health Records and/or Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with all applicable requirements of law relating to Health Records and/or PHI with respect to any task or other activity it performs for the State including, as required by the final Privacy and Security regulations:

- (1) Implementing the following HIPAA requirements for any forms of Health Records and/or PHI that the Contractor receives, maintains, or transmits on behalf of the State:
  - (a) Administrative safeguards under 45 CFR § 164.308
  - (b) Physical safeguards under 45 CFR § 164.310
  - (c) Technical safeguards under 45 CFR § 164.312
  - (d) Policies and procedures and documentation requirements under 45 CFR § 164.316;
- (2) Implementing a disaster recovery plan, as appropriate for work conducted for this Contract, which includes mechanisms to recover data and/or alternative data storage sites, as determined by the State to be necessary to uphold integral business functions in the event of an unforeseen disaster;

- (3) Not using or further disclosing Health Records and/or PHI other than as permitted or required by this Contract or by applicable law;
- (4) Immediately reporting to DCS' HIPAA Compliance Office any security and/or privacy breach directly relating to the work performed for this Contract of which the Contractor becomes aware;
- (5) Mitigating, to the extent practicable, any harmful effect that is known to the Contractor and immediately reporting to DCS' HIPAA Compliance Office any use or disclosure by the Contractor, its agent, employees, subcontractors or third parties, of Health Records and/or PHI obtained under this Contract in a manner not provided for by this Contract or by applicable law of which the Contractor becomes aware;
- (6) Ensuring that any subcontractors or agents to whom the Contractor provides Health Records and/or PHI received from, or created or received by the Contractor, subcontractors or agents on behalf of the State agree to the same restrictions, conditions and obligations applicable to such party regarding Health Records and/or PHI and agree to implement the required safeguards to protect it;
- (7) Making the Contractor's internal practices, books and records related to the use or disclosure of Health Records and/or PHI received from, or created or received by the Contractor on behalf of the State available to the State at its request or to the Secretary of the United States Department of Health and Human Services ("DHHS") for purposes of determining the State's compliance with applicable law. The Contractor shall immediately notify DCS' HIPAA Compliance Office upon receipt by the Contractor of any such request from the Secretary of DHHS or designee, and shall provide DCS' HIPAA Compliance Office with copies of any materials made available in response to such a request;
- (8) In accordance with procedures established by the State, making available the information required to provide an accounting of disclosures pursuant to applicable law, if the duties of the Contractor include disclosures that must be accounted for;
- (9) Making available Health Records and/or PHI for amendment and incorporating any amendments to Health Records and/or PHI in accordance with 45 CFR § 164.526, if the Contractor maintains Health Records and/or PHI subject to amendment;
- (10) Make Health Records and/or PHI available to individuals entitled to access and requesting access in compliance with 45 CFR § 164.524 and the duties of the Contractor;

- (11) At the discretion of the State, authorizing termination of the Contract if the Contractor has violated a material provision of this Section; and
- (12) At the termination of the Contract, the Contractor shall return or destroy all Health Records and/or PHI received or created under the Contract. If the State determines return or destruction is not feasible, the protections in this Contract shall continue to be extended to any Health Records and/or PHI maintained by the Contractor for as long as it is maintained.

C. Drug and Alcohol Patient Abuse Records. In the performance of the services listed in this Contract, the Contractor may have access to confidential information concerning the disclosure and use of alcohol and drug abuse patient records. The Contractor understands and agrees that data, materials and information disclosed to the Contractor may contain confidential and protected data, including confidential individual information concerning alcohol and drug abuse patient records. Therefore, the Contractor promises and assures that any such confidential data, material, and information gathered or disclosed to the Contractor for the purposes of this Contract and specifically identified as Confidential Information will not be disclosed or discussed with others without the prior written consent of the State. The Contractor and the State shall comply with applicable requirements under 42 CFR Part 2 and any other applicable federal or state statutory or regulatory requirements. The Contractor shall immediately report any unauthorized disclosures of these records to DCS' HIPAA Compliance Office.

#### **24. Indemnification.**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

#### **25. Independent Contractor; Workers' Compensation Insurance.**

A. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership, or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

B. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

C. The Contractor certifies and agrees that the services the Contractor provides under this Contract will be performed in accordance with the following guidelines:

(1) **Behavioral control** - The Contractor will be responsible to direct and control its staff with respect to how to carry out its duties under this Contract including:

(a) monitoring or providing training on how to perform services and

(b) instructions on:

-when and where to do the work;

-what tools or equipment to use;

-what workers to hire or to assist with the work;

-where to purchase supplies and services;

-what work must be performed by a specified individual; and

-what order or sequence to follow.

(2) **Financial control** - In carrying out its duties hereunder, the Contractor will be responsible for:

(a) all business expenses incurred;

(b) any facilities or equipment it requires;

(c) managing its resources to meet obligations to the State and any other parties;

(d) all employment or contract issues with its staff; and

(e) managing any fluctuations in the cost of providing services.

(3) **Type of relationship** - The Contractor's relationship with the State:

(a) is controlled by this Contract;

(b) includes no benefits other than the consideration paid for services rendered;

(c) includes no promise of future agreements; and

(d) addresses only one aspect of the State's overall mission.

## 26. **Information Technology Enterprise Architecture Requirements.**

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all Indiana Office of Technology ("IOT") standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC § 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in

advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

**27. Insurance.**

A. The Contractor shall secure and keep in force during the term of this Contract the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

- (1) Commercial general liability, including contractual coverage and errors and omissions coverage for professional conduct, and products or completed operations coverage (if applicable), with minimum liability limits of not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State.
- (2) Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence.
- (3) The Contractor shall provide proof of such insurance coverage by tendering to the State representative listed directly below in this subparagraph a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the state of Indiana is required if any of the services provided under this Contract involve work outside of Indiana. The Contractor shall send the above-described proof of insurance coverage to: Ginny Morris, Indiana Department of Child Services, 302 W. Washington Street, Room E306, MS 47, Indianapolis, IN 46204.

B. The Contractor's insurance coverage must meet the following additional requirements:

- (1) The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
- (2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- (3) The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

- (4) The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
- C. The State may require the Contractor to provide a bond or insurance coverage for all persons who will be handling funds or property received or disbursed as a result of this Contract, or who may carry out the duties specified in this Contract, in an amount equal to one-half (1/2) of the total payments provided to the Contractor under this Contract or \$250,000, whichever is less, to be effective for the period of this Contract plus three (3) years for purposes of discovery. The Contractor's coverage must provide protection against losses resulting from criminal acts and wrongful performance of the duties specified herein and must specify the state of Indiana as an obligee or additional insured. The Contractor shall immediately notify the State if said bond or insurance is cancelled or modified in amount of coverage. In the event of cancellation, the State shall make no further payments until certification is provided by a bonding or insurance company that the provisions set forth in this Section have been satisfied. The State may at its discretion require the Contractor to furnish additional or different bond or insurance coverage.
- D. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before commencement of this Contract. As described above in paragraph A(3) of this Section, the Contractor shall send the above-described proof of insurance coverage to: Ginny Morris, Indiana Department of Child Services, 302 W. Washington Street, Room E306, MS 47, Indianapolis, IN 46204.

**28. Key Person(s) – deleted**

**29. Licensing Standards.**

The Contractor, its employees, and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**30. Merger & Modification.**

- A. This Contract constitutes the entire agreement between the parties with respect to the subject matter herein. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. Except as provided herein, this Contract shall not be modified, supplemented, or amended in any manner.
- B. The parties agree that due to the uncertain availability of state and/or federal appropriated funds and/or the possibility of the need for a reduction in the services provided pursuant to this Contract, the total consideration payable by the State as specified in Section 2 of this Contract may be unilaterally decreased by the State, with a corresponding reduction in the Contractor's duties and responsibilities, immediately upon the Contractor's receipt of written notice (with any requisite revised **Attachment A** attached thereto) or on the date specified in such notice. Such written notice shall be delivered to the Contractor at the address specified in Section 33 of this Contract via both first-class U.S. mail and e-mail. This paragraph does not affect any right of the Contractor to payment for services performed before receipt of such written notice.
- C. The State may conduct periodic reviews of the anticipated utilization of funds provided by the State pursuant to this Contract. After such a review, the State may decide to reduce or redistribute the funding available to the Contractor pursuant to this Contract. The State shall give written notice of its decision to reduce or redistribute the funding available to the Contractor, which notice shall include a statement of the reasons for such modification and include, if applicable, an updated **Attachment A** reflecting such change. Such written notice shall be effective immediately upon the Contractor's receipt of such written notice or on the date specified in such notice.
- D. Should the State (on its own or after it considers a request of the Contractor) determine that any billable unit, payment point, service code, service component, or any of the budgeted amounts for any service or cost component require(s) modification and such modification requires a revision to the information included in **Attachment A**, such changes shall not require the execution of a formal amendment to this Contract, but may be accomplished by written notice from the State to the Contractor with an accompanying updated **Attachment A**. Such written notice shall be effective immediately upon the Contractor's receipt of such written notice or on the date specified in such notice.
- E. As long as the modifications described above in paragraphs B, C, and D of this Section do not increase the total remuneration amount specified in Section 2 and **Attachment A**, such modifications, even if they require creation of a revised **Attachment A**, may be accomplished by letter of notification from the State to the Contractor (with any requisite revised **Attachment A** attached thereto),

without the necessity for a formal contract amendment. However, any modifications to this Contract that would increase the total remuneration amount of this Contract shall require the execution of a formal amendment to this Contract, signed by all necessary parties.

- F. With the exception of the modification procedures permitted pursuant to paragraphs B, C, D, and E of this Section, this Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties. Nothing herein shall be construed as a commitment to execute future agreements with the Contractor or to extend this Contract in any way.

**31. Minority and Women’s Business Enterprises Compliance.**

All contractors who submitted responses to the YSB Administration RFP indicated whether they were a MBE or a WBE listed on the Minority and Women’s Business Enterprises Division Directory, which assists DCS in its effort to keep an agency-wide record of the percentage of its contractors that are MBEs or WBEs. This Contractor indicated the following:

- \_\_\_\_\_ The Contractor is a MBE.
- \_\_\_\_\_ The Contractor is a WBE.
- \_\_\_\_\_ The Contractor is not a MBE or a WBE.

**32. Nondiscrimination.**

- A. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, and except as permitted by 28 CFR Part 38 "Equal Treatment for Faith-Based Organizations", the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.
- B. The Contractor further agrees to comply with all applicable provisions of Indiana

Code 22-9; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title II of the Americans with Disabilities Act, 42 U.S.C. 12134; and all other non-discrimination laws and regulations of the United States and the state of Indiana. In particular, the Contractor will ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, be excluded from participating in or be denied the benefit of the Contractor's services, or otherwise be subjected to discrimination under any program or activity for which the Contractor or its subcontractors receive, directly or indirectly, state or federal funds.

- C. The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.
- D. The parties agree that any publicity release or other public reference, including media releases, information pamphlets, etc., relative to the services provided under this Contract, will clearly state that all services are provided without regard to race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran.

**33. Notice to Parties.**

- A. Whenever any notice, statement or other communication is required under this Contract, it shall be sent via first-class U.S. mail and/or e-mailed to the following addresses, unless otherwise specifically advised.

- (1) Notices to the State shall be sent and/or e-mailed to:

**Ginny Morris**  
**Indiana Department of Child Services**  
**302 W. Washington Street, Room E306, MS 47**  
**Indianapolis, IN 46204**  
**E-mail: Ginny.Morris@dcs.in.gov**

- (2) Notices to the Contractor shall be sent and/or e-mailed to:

**[Individual's Name]**  
**[Individual's Title]**  
**[Contractor Name]**  
**[Address Line 1]**  
**[Address Line 2]**  
**[E-mail Address of Individual]**

- B. Notice of any change in the person or address to whom notices should be sent and/or e-mailed, as specified in paragraph A of this Section, shall be given to the

other party in the manner provided in paragraph A of this Section.

- C. As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**34. Order of Precedence; Incorporation by Reference.**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract; (2) any written notices given by the State to the Contractor (including any attachments thereto) pursuant to Section 30 of this Contract; (3) **Attachment A**; (4) **Exhibit 3** (which will be described below in Section 51 of this Contract); (5) the most current form of the Assurances (which are described in Section 1(A)(2)); (6) the YSB Administration RFP (relevant portions of which are attached hereto as **Exhibit 1**); (7) the budget that DCS has approved for the Contractor's provision of YSB Administration Services as referenced above in Section 1(A)(3); and (8) the Contractor's RFP Response (relevant portions of which are attached hereto as **Exhibit 2**). All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**35. Ownership of Documents and Materials.**

- A. All documents, records, programs, data, film, tape, articles, memoranda, and other materials developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. The Contractor specifically releases to the State any property right which the Contractor may have to copyright, license, patent, or otherwise dispose of data, findings, recommendations, or other work product of this Contract. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract and as necessary thereafter.
- B. The Contractor shall grant the State shared access to all documents, including child files, records, programs, data, film, tape, articles, memoranda, and other materials related to this Contract. The Contractor shall provide the State full, immediate, and unrestricted access to such documents and materials during the term of this Contract and as necessary thereafter.
- C. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to any of the above-referenced materials developed for or supplied by the State and/or used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall also be responsible for preserving and protecting the ownership and property rights of the

State in all work in progress and other property to which the State is entitled hereunder, while the property is in the control or custody of the Contractor.

**36. Payment and Fiscal Requirements.**

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20. If the Contractor prefers not to have any interest calculated on payments made by the State as permitted by Indiana law and referenced below in Section 37, the Contractor may send a letter indicating such preference to the Indiana Auditor of State with a copy to DCS.
- B. The Contractor shall submit invoices/claim forms and such invoice/claim documentation as may be required by DCS for payment pursuant to this Contract. DCS will notify the Contractor of any change in invoice/claim procedure, and the Contractor shall use whatever invoice/claim forms and documentation are required by DCS' then current procedure and shall submit the appropriate invoices/claim forms and documentation to DCS, as directed. Invoices/claim forms may be submitted monthly for services performed during the calendar month(s) preceding the date of the invoice. Payment will be due not later than thirty-five (35) days after the date Contractor's invoice is received by DCS, together with a properly prepared invoice/claim voucher and any required documentation as approved by DCS. However, the payment due date shall not apply to any invoice/claim that is disapproved or returned to the Contractor by DCS for revision or additional documentation, within thirty-five (35) days after the date it is received by DCS. The Contractor's invoice must be dated no earlier than the later of (a) the first date the Contractor is entitled to submit an invoice/claim for payment under the applicable provision of this Contract, or (b) one day before the date the invoice and accompanying claim documentation is delivered or mailed to DCS.
- C. An invoice will not be deemed to be properly prepared as required above in paragraph B if it is not received within ten (10) business days of the date included on the invoice (the "Invoice Date"). Any invoices submitted more than ten (10) business days after the Invoice Date will be deemed improperly prepared and will not be paid. DCS shall return such improperly prepared invoices to the Contractor for revision and such invoices must be resubmitted by the Contractor with a current Invoice Date in order to be processed for payment.
- D. A properly prepared invoice/claim must be submitted to DCS within ninety (90) calendar days after the date services are provided or costs incurred pursuant to this Contract. DCS may elect to deny payment of any invoices/claims that are not timely submitted as required in this paragraph. In the event the Contractor delays

submitting a claim for which it expects third-party reimbursement, the Contractor may submit a written explanation to DCS as to why the claim was not timely submitted. If the claim was delayed because of billing Medicaid, Medicare, or private insurance for reimbursement that was denied, the explanation must include the specific reason(s) for denial. If DCS deems that such written explanation described above is satisfactory, DCS shall pay otherwise valid claims. In the event that Medicaid, Medicare, or private insurance has denied reimbursement because the Contractor failed to provide adequate documentation for an otherwise reimbursable claim, DCS will only be liable to pay the amount it would have paid had Medicaid, Medicare, or private insurance approved the claim.

- E. Approval and payment of final invoices/claims will be conditioned upon receipt and approval of all State-required documentation. As State claiming or recordkeeping systems change, the Contractor may need to modify its systems to be compatible with State systems. The State will provide reasonable notice of any such changes.
- F. If the Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**37. Penalties/Interest/Attorney's Fees.**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, and IC § 34-13-1.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**38. Progress Reports.**

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**39. Public Record.**

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**40. Renewal Option.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of IDOA and the State Budget Director in compliance with IC § 5-22-17-4. The term of each renewal may not be longer than the term of the original Contract.

**41. Severability.**

The invalidity of any Section, subsection, clause or provision of this Contract shall not affect the validity of the remaining Sections, subsections, clauses or provisions of this Contract.

**42. Substantial Performance.**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**43. Taxes.**

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**44. Termination for Convenience.**

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency, whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a termination notice (the "Termination Notice") at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration ("IDOA") shall be deemed to be a party to this Contract with authority

to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**45. Termination for Default and Termination or Suspension for Additional Reasons.**

A. Termination for Default

- (1) With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
  - (a) Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
  - (b) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
  - (c) Make progress so as to endanger performance of this Contract; or
  - (d) Perform any of the other provisions of this Contract.
- (2) If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (3) The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause of this Contract. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- (4) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

B. Termination for Endangering Life, Health, or Safety of Any Person. If the State determines that any breach of this Contract by the Contractor endangers the life, health, or safety of any person, the State may terminate this Contract by orally notifying the Contractor of the termination, followed by the mailing of written notification thereof within three (3) business days. Termination pursuant to this paragraph shall become effective at the time of the oral notification.

- C. Termination for Certain Business Changes, Assignments, and Bankruptcy. The Contractor agrees that the State may terminate this Contract immediately if the Contractor (1) ceases doing business; (2) assigns, transfers or delegates any of its duties and responsibilities for performance of this Contract to any other person or entity without prior written approval of the State; (3) changes or reorganizes its business in a manner which substantially impairs the ability of the Contractor to perform the services described in this Contract and its exhibits/attachments; (4) attempts to assign, transfer, convey or encumber this Contract in any way except as expressly authorized pursuant to the conditions of this Contract; and/or (5) if an order for relief is entered upon a voluntary or involuntary petition by or against the Contractor under any provision of Title 11, United States Code, and the trustee or debtor-in-possession does not timely assume all obligations of this Contract to be performed by the Contractor, as provided in 11 U.S.C. § 365, or in the event of appointment of a receiver for the Contractor or execution of an assignment for the benefit of creditors of the Contractor. Any notice of termination pursuant to this paragraph shall be provided in writing to the Contractor.
- D. Termination for Change in Legal Status. The Contractor shall provide written notice to the State of any change in the Contractor's legal name or legal status including, but not limited to, a sale or dissolution of the Contractor's business. The State reserves the right to terminate this Contract should the Contractor's legal status change in any way. Termination pursuant to this paragraph shall be effective from the date of the change in the Contractor's legal status.
- E. Termination for Additional Reasons Stated in this Contract. This Contract is also subject to termination or suspension as stated in any other Section of this Contract, including, but not limited to: Section 7 (Audits and Monitoring); Section 10 (Compliance with Laws); Section 15 (Default by State); Section 17 (Drug-Free Workplace Certification); Section 18 (Employment Eligibility Verification); Section 20 (Force Majeure); Section 21 (Funding Cancellation); Section 23 (HIPAA Compliance); Section 26 (Information Technology Enterprise Architecture Requirements); Section 27 (Insurance); Section 29 (Licensing Standards); Section 32 (Nondiscrimination); Section 44 (Termination for Convenience); Section 50 (Conflict of Interest); and Section 51 (Criminal and Background Checks).
- F. State Only Liable for Payment for Services Properly Provided Prior to Termination. If this Contract is terminated for any reason, the State shall only be liable for payment for services properly provided prior to the effective date of termination. The State shall not be liable for any costs incurred by the Contractor in reliance upon this Contract subsequent to the effective date of termination.

#### **46. Travel.**

As described in Section 2(C), the only expenses for travel that will be reimbursed by the State are those travel expenses specifically permitted under the scope of services or consideration provisions as set forth in Sections 1 and 2 of this Contract (and its

exhibits/attachments/links to relevant websites). If properly invoiced for as set forth in Sections 2 and 36 of this Contract, such expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**47. Waiver of Rights.**

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract. No waiver by the State of any breach of any provision of this Contract shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof.

**48. Work Standards.**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards applicable to the services it provides pursuant to this Contract. The Contractor is responsible for ensuring that its employees, agents, and any subcontractors conform to the professional and technical guidelines and standards applicable to all services and programs that the Contractor provides under this Contractor. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract and/or those individuals assigned to provide any of the services pursuant to this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**49. Delivery of Documents, Files, Data, Studies or Reports to the State Upon Termination or Expiration of this Contract.**

Upon expiration or termination of this Contract, all documents, files, data, studies or reports prepared by the Contractor or any subcontractor pursuant to this Contract, and any supplies purchased by the Contractor or any subcontractor with funds received through this Contract, shall be delivered to the State. The State may require the transfer of records, documents, or supplies to its own offices or to a designated successor.

**50. Conflict of Interest.**

A. Paragraphs B through E of this Section apply if the Contractor is an individual, a corporation that issues stock to individuals representing ownership shares of the

corporation, a partnership, a limited liability company, or any other form of business organization or association the members or owners of which could receive a personal financial benefit or increase in personal net worth attributable to income or profits received by the organization (exclusive of compensation in the form of salary or wages paid for services rendered to the organization). This Section, other than Paragraph F, does not apply if the Contractor is a nonprofit corporation, a school or university that is not organized or operated for the financial benefit or profit of individual owners, or an agency of a political subdivision or other governmental organization.

B. As used in this Section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

- (1) The individual executing this Contract;
- (2) An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
- (3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- C. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the state of Indiana.
- D. The Department will not exercise its right of cancellation under paragraph C above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the state of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state of Indiana employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this Section.
- E. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the state of Indiana. The obligation under this Section extends only to those facts which the Contractor knows or reasonably could know.

- F. The Contractor acknowledges and agrees that no employee, agent, representative, or subcontractor of the Contractor who may be in a position to participate in the decision-making process of the Contractor or its subcontractors may derive an inappropriate personal or financial interest or benefit from any activity funded through this Contract, either for himself or herself or for those with whom he or she has family or business ties.

**51. Criminal and Background Checks.**

- A. This Section applies to all directors/chief executive officers, facility managers, licensing applicants and other heads of agencies, by whatever title, and each employee or volunteer (which includes interns) who has or will have electronic or physical access to children's records or direct contact with children on a regular and continuing basis or any contact when a child(ren) is/are alone or only with the Provider's staff in connection with performance of any services or activities pursuant to this Contract ("Covered Personnel"). To the extent applicable, the Contractor (referred to in this Section as Provider) shall conduct all criminal history and background checks required by law, this Contract, and the applicable DCS' policies, including those implemented by Administrative Letter. All required checks must be completed *prior to* the Contractor submitting this Contract for State signature. The checks will be conducted in the same manner as required for licensed residential child caring institutions, with respect to IC § 31-27-3-3, subsections (e)(1) and (f), and the Provider shall maintain records of information it gathers and receives on Covered Personnel checked pursuant to this Section. The applicable laws and DCS' policies and practices are updated periodically, and the Provider shall comply with those current as of the time the Provider executes this Contract, adds Covered Personnel, renews this Contract, or reaches the anniversary date of commencement of a multi-year agreement. Upon request, DCS will furnish the Provider with information on updates and any changes in policy or procedure. The current procedure requires the Provider to conduct the following checks:

- (1) For those with **direct contact** with children on a regular and continuing basis or any contact when a child(ren) is/are alone or only with the Provider's staff in connection with performance of any services or activities pursuant to this Contract:
  - (a) *Verify the identity* of all individuals subject to criminal and background checks by viewing a current government issued picture I.D;
  - (b) *Conduct Child Protection Services (CPS) checks* for all states of residency in the past five (5) years (for Indiana, send DCS a Request for Child Protection Services History Check; for other states, *see* DCS' website on child welfare policies and contractor policies for web links to CPS records);

- (c) *Conduct Sex Offender Registry checks* for all states of residency in the past five (5) years (*see* DCS' website for web links for national and state sex offender registry checks);
  - (d) *Conduct Local Law Enforcement checks with law enforcement agencies that would have responded to each residential address in the last five (5) years;*
  - (e) *Register for Fingerprint-Based National and State Checks through the State approved fingerprint vendor* [To do so, Contractor must confirm that it is listed as a current DCS agency with the current state-approved fingerprint vendor. If not, the Contractor's name will need to be added as a DCS agency prior to registering for fingerprinting.], *and follow through with obtaining fingerprints;* and
  - (f) *Review Results of Criminal and Background Checks* and take appropriate action.
- (2) For those with **only** electronic or physical **access to children's records**:
- (a) *Verify the identity* of all individuals subject to criminal and background checks by viewing a current government issued picture I.D;
  - (b) *Conduct Child Protection Services (CPS) checks* for all states of residency in the past five (5) years (for Indiana, send DCS a Request for Child Protection Services History Check; for other states, *see* DCS' website on child welfare policies and contractor policies for web links to CPS records);
  - (c) *Conduct Sex Offender Registry checks* for all states of residency in the past five (5) years (*see* DCS' website for web links for national and state sex offender registry checks); and
  - (d) *Review Results of Criminal and Background Checks* and take appropriate action.

All directors/chief executive officers, facility managers, and licensing applicants, regardless of their level of contact with children, shall have background checks commensurate with the highest level of background checks required of any other Covered Personnel within their organization. If no other Covered Personnel require background checks and no exception is granted for an administrative contract, they shall have the checks described in this paragraph A(2).

- (3) For all Covered Personnel and Subcontractors:

The Provider shall require Covered Personnel and subcontractors for this Contract to immediately notify the Provider of any information about them that would have been revealed by the checks above including substantiation for child abuse or neglect or other similar complaints or charges and of any convictions or arrests. The Provider shall immediately

relay such notice to DCS. The Contractor shall further collect from each Covered Personnel an annual attestation regarding whether that individual has any history of such substantiation, arrest or conviction and shall include any previously unreported information to DCS in its annual Certification (such Certification is included in **Exhibit 3**, which is attached hereto and hereby incorporated by reference).

Except for A(3) above, the required checks must be performed every four (4) years based on the anniversary of the individual Covered Personnel's initial checks.

- B. The Provider shall be responsible for assessing job responsibilities and categorizing Covered Personnel as subject to A(1), A(2), or as not-covered and for performing the appropriate checks. Any Covered Personnel who might serve as a substitute for a covered position, even in emergency circumstances, should undergo the checks required for that covered position.
- C. The Provider shall maintain a record of the results of each check conducted pursuant to this Section. The Provider shall, if requested by the State, provide a copy of that record to DCS or make the record available for inspection by an authorized representative of DCS.
- D. With respect to any current Covered Personnel, the Provider shall submit the form attached hereto as **Exhibit 3** (or a similar form as updated by DCS) at the time it submits this Contract to the State for signature or within thirty (30) days after the effective date of this Contract, whichever is earlier, and annually upon the anniversary of the effective date of the Contract. **Exhibit 3** will certify that the requirements under paragraph A of this Section have been completed. The Provider shall furnish any other documentation related to background checks as DCS requests. The Provider has an ongoing obligation to assess job responsibilities and to conduct appropriate checks for employees or volunteers who join the Provider after this Contract begins. Such staff may **not** provide any services that involve contact with children before the requisite checks have been completed.
- E. In order to allow DCS to evaluate the results and to make determinations regarding qualifications, national fingerprint-based criminal history checks relating to Covered Personnel are required to be conducted through DCS' approved fingerprint vendor in accordance with the terms and conditions stated in IC § 10-13-3-38.5, 39. The results of the national fingerprint-based criminal history checks will be returned to DCS as an authorized entity to receive the results. DCS will inform the Provider whether the report it receives concerning the subject of a check shows any record that would be grounds for denial of his/her ability to provide services and/or perform activities pursuant to this Contract. If any Covered Personnel receive a response of conditionally disqualified or disqualified, further follow up is required. If the result is disqualified, then the individual may be eligible for a waiver. The Provider should contact the DCS' background check unit to determine if the

individual is eligible and to apply for the waiver. DCS will not release to the Provider any criminal history record information ("CHRI") contained in any report that it receives from the Federal Bureau of Investigation ("FBI") through the Indiana State Police ("ISP"). If the Provider requests a waiver of criminal history, DCS will inform the Provider of the decision on the waiver request.

- F. In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of his/her ability to provide services and/or perform activities pursuant to this Contract and the Provider chooses to retain such employee or volunteer, that decision may be considered a material breach of this Contract.
- G. The Provider will be responsible for payment of all fees required to be paid for conducting any check required under this Section, whether the check is conducted by the Provider or by DCS. Any fees paid by DCS on behalf of the Provider may be offset against any claim for payment submitted by the Provider under this Contract.
- H. Upon request, DCS will assist the Provider in clarifying the requirements of this Section.

**52. Purchase and Disposal of Property.**

- A. As used in this Contract, "equipment" means tangible, non-expendable, personal property having a useful life of more than one (1) year and having a unit acquisition cost of \$5,000.00 or more. The Contractor will not expend any funds provided by the State pursuant to this Contract for the purchase or maintenance of equipment.
- B. As used in this Contract, "supplies" includes all tangible personal property other than equipment that is purchased or acquired by the Contractor through expenditure of funds provided to the Contractor by the State pursuant to this Contract. If the Contractor has in its possession, upon expiration or termination of this Contract, unused supplies having a total aggregate fair market value exceeding \$5,000.00, the Contractor may retain those supplies for use in any continuation of the program or activities funded pursuant to this Contract that is supported by a federal funding source, or any other program or activity that is supported by a grant or contract from the State that is funded in whole or in part by a federal agency.
- C. If all or any portion of supplies having a total aggregate fair market value at expiration or termination of this Contract exceeding \$5,000.00 are not needed or used for a purpose described in paragraph B above, the Contractor may retain those supplies for other uses or sell them. In either case, the Contractor shall reimburse the State for its proportionate share of the value or sale proceeds of the supplies, in the amount determined in accordance with 45 CFR 74.34(g).

- D. If the total aggregate fair market value of supplies in the Contractor's possession upon expiration or termination of this Contract is \$5,000.00 or less, the Contractor may retain or dispose of those supplies for its own use, without further obligation to account to the State for their disposition or proceeds thereof.
- E. The Contractor shall retain all records relating to the purchase and disposal of supplies during the term of this Contract and for a period of four (4) years from the date the Contractor submits any final financial status or final program report to the State, or one (1) year from the resolution of any outstanding administrative, program, or fiscal audit question, or legal action, whichever is later.

**53. Buy American.**

The State and the Contractor agree that, to the greatest extent applicable, all equipment and products purchased with funds provided by the State pursuant to this Contract shall be American-made.

**54. State Boilerplate Affirmation Clause.**

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2012 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

- 5. **Assignment; Successors; and Subcontracting - modified;**
- 7. **Audits and Monitoring – modified;**
- 9. **Changes in Work - modified;**
- 10. **Compliance with Laws - modified;**
- 11. **Condition of Payment – modified;**
- 13. **Continuity of Services – modified;**
- 18. **Employment Eligibility Verification – modified;**
- 19. **Employment Option – modified;**
- 21. **Funding Cancellation – modified;**
- 23. **HIPAA Compliance – modified;**
- 25. **Independent Contractor; Workers' Compensation Insurance – modified;**
- 27. **Insurance - modified;**
- 28. **Key Person(s) – deleted;**
- 30. **Merger & Modification – modified;**
- 31. **Minority and Women's Business Enterprises Compliance – modified;**
- 32. **Nondiscrimination - modified;**
- 33. **Notice to Parties - modified;**
- 34. **Order of Precedence; Incorporation by Reference - modified;**
- 35. **Ownership of Documents and Materials – modified;**
- 36. **Payment and Fiscal Requirements - modified;**
- 40. **Renewal Option – modified;**

- 45. Termination for Default and Termination or Suspension for Additional Reasons – modified;**
- 46. Travel – modified;**
- 47. Waiver of Rights – modified;**
- 48. Work Standards – modified;**
- 49. Delivery of Documents, Files, Data, Studies or Reports to the State Upon Termination or Expiration of this Contract - added;**
- 50. Conflict of Interest - added;**
- 51. Criminal and Background Checks – added;**
- 52. Purchase and Disposal of Property – added; and**
- 53. Buy American – added.**

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**SIGNATURE PAGE**  
**EDS#** \_\_\_\_\_

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.

**In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

**Contractor:** \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Indiana Department of Child Services**

By: \_\_\_\_\_  
John P. Ryan, Director  
Date: \_\_\_\_\_

**Indiana Department of Administration**

By: \_\_\_\_\_ (for)  
Robert D. Wynkoop, Commissioner  
Date: \_\_\_\_\_

**State Budget Agency**

By: \_\_\_\_\_ (for)  
Christopher D. Atkins, Director  
Date: \_\_\_\_\_

**APPROVED as to Form and Legality:**  
**Office of the Attorney General**

By: \_\_\_\_\_ (for)  
Gregory F. Zoeller, Attorney General  
Date: \_\_\_\_\_